

Virginia Pesticide Control Act (Title 3.1, Chapter 14.1)

Article 1 - General Provisions.

§ 3.1-249.27. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Active ingredient" means, in the case of a pesticide other than a plant regulator, defoliant, desiccant, or anti-desiccant, an ingredient which will prevent, destroy, repel or mitigate insects, fungi, rodents, weeds, or other pests.

"Agricultural commodity" means any plant or part thereof, or animal, or animal product, produced by a person, including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, nurserymen, wood treaters not for hire, or other comparable persons, primarily for sale, consumption, propagation, or other use by man or animals.

"Board" means the Pesticide Control Board.

"Bond" means a written instrument issued or executed by a bonding, surety, or insurance company licensed to do business in the Commonwealth, or otherwise approved by the Board, guaranteeing the fulfillment of the agreement between the licensee and the customer.

"Certificate" means the document issued to a certified applicator or registered technician who has completed all the requirements of Article 3 (§ [3.1-249.51](#) et seq.) of this chapter.

"Certification" or "certified" means the recognition granted by the Pesticide Control Board to an applicator upon satisfactory completion of Board approved requirements.

"Certified applicator" means a person who (i) has satisfactorily completed the Board requirements for certification as a commercial applicator, registered technician, or private applicator, and (ii) has been issued a valid certificate.

"Commercial applicator" means any person who has completed the requirements for certification as determined by the Board to use or supervise the use of any pesticide for any purpose or on any property other than as provided in the definition of private applicator.

"Commissioner" means the Commissioner of Agriculture and Consumer Services.

"Committee" or "advisory committee" means any advisory committee appointed pursuant to § [3.1-249.29](#).

"Defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

"Department" means the Department of Agriculture and Consumer Services.

"Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

"Device" means any instrument or contrivance intended for trapping, destroying, repelling, or mitigating insects or rodents or destroying, repelling, or mitigating fungi, bacteria, or weeds, or such other pests as may be designated by the Commissioner, but not including treated wood products or simple, mechanical devices such as rattraps, or equipment used for the application of pesticide when sold separately therefrom.

"Fumigant" means any substance which by itself or in combination with any other substance emits or liberates a gas or gases, fumes or vapors, which gas or gases, fumes or vapors, when liberated and used, will destroy vermin, rodents, insects, and other pests.

"Fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi or plant disease.

"Herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.

"Ingredient statement" or "guaranteed analysis statement" means a statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the pesticide; and, in addition, in case the pesticide contains arsenic in any form, a statement of the percentages of total and water soluble arsenic.

"Insect" means any of the numerous small invertebrate animals generally having a body more or less obviously segmented, for the most part belonging to the class Insecta, comprising six-legged, usually winged forms, as, for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and wood lice.

"Insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any insects which may be present in any environment whatsoever.

"Label" means the written, printed or graphic matter on, or attached to, the pesticide or device, or the immediate container thereof, and the outside container or wrapper of the retail package, if any, of the pesticide or device.

"Labeling" means all labels and other written, printed, or graphic matter (i) upon the pesticide or device or any of its containers or wrappers, (ii) accompanying the pesticide or device at any time, or (iii) to which reference is made on the label or in literature

accompanying the pesticide or device, except when accurate, nonmisleading reference is made to current official publications of the agricultural experiment station, the Virginia Polytechnic Institute and State University, the Department of Agriculture and Consumer Services, the State Board of Health, or similar federal institutions or other official agencies of the Commonwealth or other states when such agencies are authorized by law to conduct research in the field of pesticides.

"Licensed" or "licensee" means those businesses which, upon meeting the requirements established by the Pesticide Control Board, are issued a license to engage in the sale, storage, distribution, recommend the use, or application of pesticides in Virginia in exchange for compensation.

"Misbranded" shall apply to any pesticide or device:

1. If its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;
2. If it is an imitation of or is offered for sale under the name of another pesticide;
3. If its labeling bears any reference to registration under this chapter;
4. If the labeling accompanying it does not contain directions for use which are necessary and, if complied with, adequate for the protection of the public;
5. If the label does not contain a warning or caution statement which may be necessary and, if complied with, adequate to prevent injury to living man and other vertebrate animals, vegetation, and useful invertebrate animals;
6. If the label does not bear an ingredient statement or guaranteed analysis statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statement or guaranteed analysis statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase; provided, that the commissioner may permit the ingredient statement to appear prominently on some other part of the container, if the size or form of the container makes it impracticable to place it on the part of the retail package which is presented or displayed under customary conditions of purchase;
7. If any words, statement, or other information required by or under the authority of this chapter to appear on the labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
8. If in the case of an insecticide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized safe practice, it shall be injurious to living man or

other vertebrate animals or vegetation, to which it is applied, or to the person applying such pesticide, excepting pests and weeds; or

9. If in the case of a plant regulator, defoliant, or desiccant when used as directed it shall be injurious to living man or other vertebrate animals, or vegetation to which it is applied, or to the person applying such pesticide; provided, that physical or physiological effects on plants or parts thereof shall not be deemed to be injury, when this is the purpose for which the plant regulator, defoliant, or desiccant was applied, in accordance with the label claims and recommendations.

"Pest" means any organism that exists under circumstances that make it deleterious to man or the environment if it is: any vertebrate animal other than man; or any invertebrate animal, such as any insect, other arthropod, nematode, or mollusk such as a slug or snail, but excluding any internal parasite of living man or other living animals; or any plant growing where not wanted, such as any moss, alga, liverwort, fungus, or other plant of any higher order, and any plant part such as a root; or any bacterium, virus, or other microorganisms, except for those on or in living man or other living animals and those on or in processed food or processed animal feed, beverages, drugs, as defined in provisions of the Federal Food, Drug, and Cosmetic Act at 21 USC § 321(g) (i), and cosmetics, as defined in provisions of the Federal Food, Drug, and Cosmetic Act at 21 USC § 321(i). Any organism classified as endangered, threatened, or otherwise protected under federal or state laws shall not be deemed a pest for the purposes of this chapter.

"Pesticide" means: (i) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, bacteria, weeds, or other forms of plant or animal life or viruses or bacterium, except viruses on or in living man or other animals, which the Commissioner shall declare to be a pest, (ii) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, and (iii) any substance which is intended to become an active ingredient in any substance defined in clause (i) and (ii).

"Pesticide business" means any person engaged in the business of: distributing, applying or recommending the use of a product; or storing, selling, or offering for sale pesticides directly to the user. The term "pesticide business" does not include (i) wood treaters not for hire; (ii) seed treaters not for hire; (iii) operations which produce agricultural products unless the owners or operators of such operations described in clauses (i), (ii), and (iii) are engaged in the business of selling or offering for sale pesticides, or distributing pesticides to persons outside of that agricultural producing operation in connection with commercial transactions; or (iv) businesses exempted by regulations adopted by the Board.

"Plant regulator" means any substance or mixture of substances, intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

"Private applicator" means an applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.

"Registered technician" means an individual who has satisfactorily completed Board requirements for certification to apply general use pesticides, and to apply restricted use pesticides while under the direct supervision of a certified commercial applicator. Registered technicians render services similar to those of a certified commercial applicator, but have not completed all the requirements to be eligible for certification as a commercial applicator.

"Registrant" means the person registering any pesticide pursuant to the provisions of this chapter.

"Repellent" means a substance, not a fumigant, under whatever name known, which may be toxic to insects and related pests, but is generally employed because of its capacity for preventing the entrance or attack of pests.

"Restricted use pesticide" or "pesticide classified for restricted use" means any pesticide classified as restricted by the Administrator of the United States Environmental Protection Agency.

"Rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating rodents or any other vertebrate animal which the Commissioner shall declare to be a pest.

"Serious violation" means a violation of this chapter or regulation promulgated by the Board where there is a substantial probability that death or serious physical harm to persons, serious harm to property, or serious harm to the environment could have resulted from the violation unless the person or licensee did not or could not with the exercise of reasonable diligence know of the violation.

"State special use" or "pesticide classified for restricted use in the Commonwealth" means any pesticide that, after special review, is judged by the Board to be so hazardous or injurious to persons, pollinating insects, animals, crops, wildlife, lands, or the environment, other than the pests it is intended to prevent, destroy, control, or mitigate, that additional restrictions on its sale, purpose, use, or possession are required.

"Under the direct supervision of" means the act or process whereby the application of a pesticide is made by a competent person acting under the instructions and control of a certified applicator who is responsible for the actions of that person.

"Unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.

"Use" means the employment of a pesticide for the purposes of (i) preventing, destroying, repelling, or mitigating any pest, or (ii) regulating plant growth, causing defoliation or desiccation of plants. The term "use" shall include application or mixing, and shall include handling or transfer of a pesticide after the manufacturer's original seal is broken. The term "use" shall also include any act with respect to a particular pesticide which is consistent with the label directions for that particular pesticide.

(1989, c. 575; 1993, c. 773; 1995, c. 103.)

§ 3.1-249.28. Pesticide Control Board established; appointment of members; terms.

A. There is hereby established a Pesticide Control Board which shall consist of twelve members, to be appointed by the Governor, as follows: two members representing the agricultural or forestal production and related agricultural industries; two members representing the commercial sale or application of pesticides sector, at least one of whom shall be a commercial applicator; two representatives from the public health and environmental community; three citizen members, one of whom the Governor shall appoint as chairman; and the State Forester, the Dean of the College of Agriculture and Life Sciences of Virginia Polytechnic Institute and State University, and the Associate Vice-President for Agriculture and Extension of Virginia State University who shall serve as ex officio members of the Board.

B. Terms shall be for four years with initial appointments made on a staggered basis; one member from each of three categories shall receive an initial appointment for two years, one member in each category shall be initially appointed for three years, and the remaining member in each category shall be appointed for a four-year term. Thereafter, all members shall be appointed for terms of four years each. Vacancies occurring, other than by expiration of a term, shall be filled by the Governor in the same manner as the original appointment for the remainder of the unexpired term.

C. The Board shall adopt rules and procedures for the conduct of business.

D. The Board shall meet quarterly and other times upon the call of the chairman.

E. A quorum shall consist of seven members.

F. Members shall be reimbursed for reasonable expenses incurred and shall be compensated consistent with § [2.2-2813](#).

(1989, c. 575; 1992, c. 121.)

§ 3.1-249.29. Powers and duties of the Board.

The Board shall have the power and duty to carry out the provisions of this chapter and is authorized to:

1. Appoint such advisory committees as necessary to implement this chapter;
2. Contract for research projects and establish priorities;
3. Publish an annual statistical report and biennial progress report for the Governor and General Assembly;
4. Consult with the Department of Environmental Quality regarding compliance with the applicable waste management regulations for the safe and proper disposal of pesticide concentrates, used pesticide containers, and unused pesticides;
5. Consult with the Virginia Department of Labor and Industry regarding compliance with the applicable standards and regulations needed to ensure safe working conditions for pest control and agricultural workers;
6. Consult with the Department of Game and Inland Fisheries regarding standards for the protection of wildlife and fish and to further promote cooperation with respect to programs established by the Department of Game and Inland Fisheries for the protection of endangered or threatened species;
7. Inform the citizens of Virginia as to the desirability and availability of nonchemical and less toxic alternatives to chemical pesticides and the benefits of the safe and proper use of pest control products while promoting the use of integrated pest management techniques and encouraging the development of nonchemical and less toxic alternatives to chemical pesticides;
8. Require that pesticides used in Virginia are adequately tested and are safe for use under local conditions;
9. Require that individuals who sell, store or apply pesticides commercially are adequately trained and observe appropriate safety practices;
10. Cooperate, receive grants-in-aid, and enter into agreements with any agency of the federal government, of this Commonwealth or political subdivision, or with an agency of another state, in order to promote the purposes of this chapter; and
11. Consult with the Department of Health regarding compliance with public health standards.

(1989, c. 575; 1991, c. 333.)

§ 3.1-249.30. Board to adopt regulations.

In addition to the power to promulgate regulations provided for in other sections of this chapter, the Board may promulgate regulations pursuant to the Administrative Process Act (§ [2.2-4000](#) et seq.), including but not limited to the following:

1. Licensing of businesses that manufacture, sell, store, recommend for use, mix or apply pesticides.
2. Registration of pesticides for manufacture, distribution, sale, storage, or use in the Commonwealth.
3. Requiring reporting and record keeping related to licensing and registration.
4. Establishing training, testing and standards for certification of commercial applicators, registered technicians, and private applicators.
5. Revoking, suspending or denying licenses (business), registration (products), and certification or certificate (applicators or technicians).
6. Requiring licensees and certificate holders to inform the public when using pesticides in and around structures.
7. Establishing a fee structure for licensure, registration and certification to defray the costs of implementing this chapter.
8. Classifying or subclassifying certification or certificates to be issued under this chapter. Such classifications may include but not be limited to agricultural, forest, ornamental, aquatic, right-of-way or industrial, institutional, structural or health-related pest control.
9. Such other regulations as may be necessary or convenient to carry out the purposes of this chapter.

(1989, c. 575.)

§ 3.1-249.31. Restriction or prohibition of certain pesticides, pesticide containers and residuals.

After considering the available information on the benefits of a product and any associated risks, the Board is authorized to prescribe regulations to restrict or prohibit the sale or use and disposal of any pesticide or pesticide container or residuals which:

1. Undesirably persists in the environment or increases due to biological amplification or unreasonable adverse effects on the environment;
2. Because of toxicity or inordinate hazard to man, animal, bird or plant may be contrary to the public interest.

(1989, c. 575; 1992, c. 114.)

§ 3.1-249.32. Complaints to Commissioner or the Board.

Any person may register a written complaint with the Commissioner or the Board relating to the sale, use, storage, handling or disposal of any pesticide and the Commissioner or the Board shall institute an investigation of the alleged damage caused by such pesticide. The Commissioner may seek the advice of other state or federal agencies or institutions. When it is determined that a violation has occurred, the Commissioner shall proceed as provided in § [3.1-249.71](#) or § [3.1-249.73](#).

(1989, c. 575.)

§ 3.1-249.33. Delegation of authority.

The Board may delegate any authority vested in it under this chapter, except the promulgation of regulations, to the Commissioner or other employees of the Department, as the Commissioner may from time to time designate for such purpose. The Board shall have the exclusive authority to regulate pesticides in accordance with this chapter. The Board's authority to regulate pesticides under this chapter shall not be delegated to any county, city or town.

(1989, c. 575; 1992, c. 289.)

§ 3.1-249.34. Disposition of fees and penalties collected.

All fees and penalties collected under this chapter shall be paid into a special fund in the state treasury to the credit of the Department to be used in carrying out the provisions of this chapter.

(1989, c. 575.)

Article 2 - Registration.

§ 3.1-249.35. Registration required.

Every pesticide which is manufactured, distributed, sold, or offered for sale, used or offered for use within the Commonwealth shall be registered in accordance with regulations adopted by the Board. Such registration shall lapse unless the registrant pays an annual fee, the amount of which shall be set forth in regulations adopted by the Board.

(Code 1950, § 3-208.19; 1966, c. 702; 1976, c. 627; 1981, c. 260, § 3.1-221; 1989, c. 575; 1993, c. 773.)

§ 3.1-249.36. Products registered under Federal Act.

The Commissioner may register and permit the sale and use of any pesticide which has been registered under the provisions of the Federal Insecticide, Fungicide and Rodenticide Act, as amended. Products so registered shall be subject to the registration fees as established by the Board, and to all other provisions of this chapter.

(Code 1950, § 3-208.20; 1966, c. 702; 1975, c. 102; 1981, c. 260, § 3.1-222; 1989, c. 575.)

§ 3.1-249.37. Products registered as single pesticide.

Products which have the same formula, and are manufactured by the same person, the labelings of which contain the same claims, and which bear designations identifying the products as the same pesticide, may be registered as a single pesticide without an additional fee.

(Code 1950, § 3-208.22; 1960, c. 535; 1966, c. 702; 1981, c. 260, § 3.1-224; 1989, c. 575.)

§ 3.1-249.38. Change in labeling or formulas without reregistration.

Within the discretion of the Commissioner, or his authorized representative, a change in the labeling or formulas of a pesticide may be made within the current period of registration, without requiring a reregistration of the product.

(Code 1950, § 3-208.23; 1966, c. 702; 1981, c. 260, § 3.1-225; 1989, c. 575.)

§ 3.1-249.39. Statement to be filed by registrant.

The registrant shall file with the Commissioner, a statement including:

1. The name and address of the registrant and the name and address of the person whose name will appear on the label, if other than the registrant;
2. The name of the pesticide;
3. A complete copy of the labeling accompanying the pesticide and a statement of all claims made and to be made for it including directions for use;
4. If requested, a full description of the tests made and the results thereof upon which the claims are based; and
5. Such other information which may include, but is not limited to, product efficacy, all known health and environmental impacts, and known incidents of human or wildlife illnesses, as determined by the Board.

In the case of renewal of registration, a statement shall be required only with respect to information which is different from that furnished when the pesticide was registered or last reregistered or is in response to additional requirements imposed by the Board.

(Code 1950, § 3-208.24; 1966, c. 702; 1981, c. 260, § 3.1-226; 1989, c. 575.)

§ 3.1-249.40. Each brand or grade to be registered; fees.

The registrant, before manufacturing, distributing, selling, offering for sale, or offering for use any pesticide in the Commonwealth, shall register each brand or grade of such pesticide with the Commissioner annually upon forms furnished by the Department, and shall pay to the Department an annual registration fee for each brand or grade to be offered for sale or use in the Commonwealth. The Commissioner shall issue a registration entitling the registrant to manufacture, distribute or sell all registered brands in the Commonwealth until the expiration of the registration.

(Code 1950, § 3-208.25; 1966, c. 702; 1970, c. 376; 1976, c. 627; 1981, c. 260, § 3.1-227; 1989, c. 575.)

§ 3.1-249.41. Submission of complete formula.

The Commissioner, whenever he deems it necessary in the administration of this chapter, may require the submission of the complete formula of any pesticide.

(Code 1950, § 3-208.26; 1966, c. 702; 1981, c. 260, § 3.1-228; 1989, c. 575.)

§ 3.1-249.42. When Commissioner to register pesticide.

If it appears to the Commissioner that the composition of the pesticide is such as to warrant the proposed claims for it and if the pesticide and its labeling and other material required to be submitted comply with the requirements of this chapter, the Commissioner shall register the pesticide.

(Code 1950, § 3-208.27; 1966, c. 702; 1981, c. 260, § 3.1-229; 1989, c. 575.)

§ 3.1-249.43. When Commissioner to notify registrant and afford opportunity to comply with chapter.

If it does not appear to the Commissioner that the pesticide is such as to warrant the proposed claims for it or if the pesticide and its labeling and other material required to be submitted do not comply with the provisions of this chapter, he shall notify the registrant of the manner in which the pesticide, labeling, or other material required to be submitted fails to comply with this chapter so as to afford the registrant an opportunity to make the necessary corrections.

(Code 1950, § 3-208.28; 1966, c. 702; 1981, c. 260, § 3.1-230; 1989, c. 575.)

§ 3.1-249.44. When Commissioner may refuse or cancel registration.

The Commissioner may refuse to register, or may cancel the registration of, any brand of pesticide as provided in this chapter, upon satisfactory proof that the registrant has committed any of the acts prohibited by subsection A of § [3.1-249.63](#) or any regulation promulgated by the Board for the enforcement of this chapter. No registration shall be revoked or refused until the registrant shall have been given a hearing by the Commissioner.

(Code 1950, § 3-208.29; 1966, c. 702; 1981, c. 260; 1982, c. 361, § 3.1-231; 1989, c. 575.)

§ 3.1-249.45. When Board may refuse or cancel registration.

The Board may deny or cancel the registration of a pesticide if it finds, after a public hearing, that:

1. Considering the available information on the benefits of a product and any associated risks, use of the pesticide has demonstrated unreasonable adverse effects on the environment; or
2. A false or misleading statement about the pesticide has been made or implied by the registrant or the registrant's agent, in writing, verbally or through any form of advertising literature; or
3. The registrant has not complied or the pesticide does not comply with a requirement of this chapter or a regulation adopted under this chapter.

(1989, c. 575; 1992, c. 114.)

§ 3.1-249.46. Annual business license required.

A. No pesticide business may sell, distribute, or store any pesticide in Virginia without a valid pesticide business license issued pursuant to regulations promulgated by the Board. The Board shall promulgate regulations which exempt retailers of limited quantities of nonrestricted use pesticides including grocery stores, convenience stores, drug stores, veterinarians and other businesses who sell pesticides primarily for limited household use.

B. No person or business may apply or recommend for use commercially in Virginia any pesticide without a valid pesticide business license issued pursuant to regulations promulgated by the Board. Such business shall employ a certified commercial applicator who is responsible for (i) the safe application of the pesticides and (ii) providing recommendations for the use of pesticides.

C. An annual business license and fee shall be required for each location or outlet that sells, distributes, stores, applies, or recommends for use any pesticide in Virginia unless otherwise exempt pursuant to the provisions of this section.

D. An application for a pesticide business license shall be submitted in such manner and form as prescribed by the Board.

(1975, c. 377, § 3.1-249.7; 1989, c. 575; 1993, c. 773.)

§ 3.1-249.47. Fees.

An application for a pesticide business license shall be accompanied by a nonrefundable annual licensing fee established by the Board.

If a person or business fails to apply for renewal of a pesticide business license prior to expiration, the applicant, as a condition of renewal, shall pay the licensing fee and a late fee of twenty percent of the licensing fee.

(1989, c. 575; 1993, c. 773.)

§ 3.1-249.48. Records.

As a condition of obtaining or renewing a license, each pesticide business required to be licensed shall maintain such records as required by the Board.

The Board may require a licensed pesticide business to submit records to the Board. Failure to submit a record requested by the Board is a ground for revocation of a license.

(1975, c. 377, § 3.1-249.11; 1989, c. 575.)

§ 3.1-249.49. Evidence of financial responsibility required of licensed pesticide business.

The Board shall not issue a pesticide business license until the business has furnished evidence of financial responsibility, consisting of a liability insurance policy from a person authorized to do business in Virginia or a certification thereof, protecting persons who may suffer legal damages as a result of the use of any pesticide by the applicant. Such financial responsibility need not apply to damages or injury to agricultural crops, plants or property being worked upon by the applicant. The Board, by regulation, may establish and prescribe the conditions under which other means of meeting the financial responsibility herein of the applicant may be met.

The amount of such financial responsibility as provided for in this section shall be established by the Board, but shall be at minimum, \$100,000 for property damage, and \$100,000 for personal injury to or death of one person, and \$300,000 per occurrence. The Board may accept a liability insurance policy containing a deductible clause in an amount

which is usual and customary in the industry, with the provision that the insurer shall pay all claims in full, and the amount of the deductible shall be recoverable only from the insured. The Board may promulgate regulations governing the provision of additional evidence of financial responsibility based upon annual gross revenue of the applicant or his employer's business and an assessment of the risks of the applicant or his employer's business to persons, property and the environment. Such financial responsibility shall be maintained at not less than such amount at all times during the licensed period. The Board shall be notified ten days prior to any reduction at the request of the applicant or cancellation of such financial responsibility by the insurer.

(1975, c. 377; 1981, c. 260; 1984, c. 272; 1987, cc. 258, 291, § 3.1-249.9; 1989, c. 575; 1993, c. 773.)

§ 3.1-249.50. Licensing of pesticide bulk storage facilities.

The Board shall establish, by regulation, specific requirements for the licensing of a pesticide business that mixes, stores or otherwise handles pesticides in bulk quantities. For purposes of this section bulk quantity shall not include containers approved for transportation in interstate commerce by the United States Department of Transportation.

(1989, c. 575.)

Article 3 - Pesticide Application and Certification.

§ 3.1-249.51. Restricted use pesticides prohibited; exceptions; training required.

A. No person shall use any pesticide classified for restricted use unless that person (i) has first complied with the certification requirements of the Board; (ii) is engaged in the training necessary for certification as a commercial applicator or registered technician, while under the direct on-site supervision of a certified applicator; or (iii) is engaged in the production of an agricultural commodity while under the direct supervision of a private applicator on property owned or leased by that private applicator.

B. The Board may specify by regulation the amount of training, which may include a period of service, required to qualify a person for each classification or subclassification of certification as a commercial applicator or registered technician.

(1975, c. 377, § 3.1-249.3; 1989, c. 575; 1993, c. 773; 1995, c. 103.)

§ 3.1-249.52. Application and certification of commercial applicators.

A. No person shall, in exchange for compensation of any kind other than the trading of personal services between producers of agricultural commodities use, except under supervised conditions of training for certification, or supervise the use of any pesticide without first obtaining certification as either a commercial applicator or registered technician in accordance with regulations promulgated by the Board. Application for a

commercial applicator's or registered technician's certificate shall be made in writing to the Commissioner. Each application for a certificate shall contain information regarding the applicant's qualifications and proposed operations, the classification or classifications the applicant is applying for, and shall include the following: (i) the full name of the applicant or if the applicant is a member of a firm or partnership, the names of the principal officers of the association, corporation or group; (ii) the principal business address of the applicant in the Commonwealth and elsewhere; and (iii) any other information required by the Commissioner.

B. The Commissioner shall not issue a commercial applicator's or registered technician's certificate until the individual who uses or supervises the use of any pesticide is certified by (i) presenting proof of completion of a training course approved by the Board and appropriate to the desired classification and (ii) passing a written examination.

C. Each commercial applicator and registered technician shall be required to renew his certification biennially under the classification or subclassification for which such applicator is certified or technician is registered, subject to payment of the required fee and presentation of proof of completion of a Board-approved recertification course. However, reexamination or special examination may be required by the Board of any person (i) whose certification has been suspended, revoked, or modified pursuant to subsection C of § [3.1-249.63](#), (ii) if significant technological developments have occurred requiring additional knowledge related to the classifications or subclassifications for which the person has been certified or registered, (iii) when required by additional standards established by the United States Environmental Protection Agency, (iv) when applying for a different classification of certification, including upgrading from technician to applicator status, or (v) when required by regulations of the Board. In the event that reexamination is required, the fee shall be no greater than that imposed for initial certification.

D. If the Commissioner finds the applicant meets the qualifications established by the Board to apply pesticides in any of the classifications he has applied for, and if the applicant is applying for a certificate to engage in aerial application of such pesticides and has met all of the requirements of the Federal Aviation Agency, the Department of Aviation of the Commonwealth, and any other applicable federal or state laws or regulations to operate the equipment described in the application, the Commissioner shall issue a certificate for classifications for which the applicant is qualified. The Commissioner may limit the certification of the applicant to the use of certain pesticides, or to certain areas, or to certain types of equipment if the applicant is only so qualified. If a certificate is not issued as applied for, the Commissioner shall, within thirty days, inform the applicant in writing of the reasons therefor. Copies of such action shall be reported to the Board.

(1975, c. 377, § 3.1-249.4; 1989, c. 575; 1993, c. 773.)

§ 3.1-249.53. Agencies or persons exempt or partially exempt.

A. All state agencies, municipal corporations or other governmental agencies shall be subject to the provisions of this article and regulations adopted thereunder concerning the application of pesticides. These agencies shall be exempt from any certification fees prescribed by this article.

B. Individuals, employees or representatives certified pursuant to this section shall be certified as commercial applicators or registered technicians for the use of pesticides covered by the applicant's certification. The certification of such individual shall be valid only when applying or supervising application of pesticides used by such governmental agencies.

C. The provisions of this article, except those contained in subsection A of § [3.1-249.56](#), shall not apply to (i) persons conducting laboratory research involving restricted use pesticides; (ii) doctors of medicine or doctors of veterinary medicine applying pesticides as drugs or medication, or to control pests in corpses during the normal course of their practice; (iii) providers of janitorial, cleaning, or sanitizing services if the providers use no pesticides other than nonrestricted use sanitizers, disinfectants, and germicides; (iv) persons who apply paints containing pesticides, provided that the pesticides in the paints are not restricted use pesticides; (v) classes of persons, specified by regulations of the Board, who, by virtue of their experience and knowledge regarding the safe use of pesticides, can use or supervise the use of pesticides with minimal risk to the public health and safety; and (vi) classes of persons, specified by regulations of the Board, whose use or supervision of the use of pesticides, by virtue of the nature of the pesticides used or method of application of the pesticides, can be accomplished with minimal risk to the public health and safety.

D. A painter who applies restricted-use marine antifoulant paint only under the direct, on-site supervision of a commercial applicator, is not required to be a commercial applicator or a registered technician. For the purposes of this subsection, one commercial applicator shall provide on-site supervision for no more than eight paint applicators.

E. Neither the provisions of subsection A of § [3.1-249.52](#) nor regulations adopted pursuant to this chapter shall require the certification of any person as a commercial applicator who, as part of his job duties only on property owned or leased by his employer, uses or supervises the use of any pesticide that is not a restricted use pesticide. However, this exemption does not apply to (i) any person who uses or supervises the use of any pesticide on any area open to the general public at the following establishments: educational institutions, health care facilities, day-care facilities, and convalescent facilities; (ii) any person who uses or supervises the use of any pesticide within any area where open food is stored, processed or sold at any establishment; (iii) any person who uses or supervises the use of any pesticide on any recreational land over five acres in size; and (iv) any person otherwise specifically required by this article to be certified as a commercial applicator.

(1975, c. 377, § 3.1-249.5; 1989, c. 575; 1993, c. 773; 1995, c. 103.)

§ 3.1-249.54. Application and certification of private applicators.

A. No person, other than one identified in clause (iii) of § [3.1-249.51](#), shall use or supervise the use of any pesticide classified for restricted use on property to which he has the right of possession or use, or on the property of another while acting as a producer of agricultural commodities, unless he (i) has first obtained certification from the Commissioner as a private applicator in accordance with regulations promulgated by the Board or (ii) is exempt or excepted from the requirement to be certified. An applicator shall be required to renew his certification biennially under the classification or subclassification for which such applicator is certified.

Reexamination or special examination is required by the Commissioner of any applicator (i) whose certification has been suspended, revoked, or modified pursuant to § [3.1-249.63](#) or (ii) if significant technological developments have occurred requiring additional knowledge related to the classifications or subclassifications for which the applicator has applied or (iii) when required by additional standards established by the United States Environmental Protection Agency or (iv) when required by regulations of the Board. To obtain recertification, the applicator shall furnish satisfactory evidence of completion of educational courses, programs, or seminars approved by the Board relating to the applicator's certification.

B. The Commissioner shall, within thirty days, inform the applicant in writing of his decision.

(1975, c. 377; 1976, c. 236, § 3.1-249.6; 1989, c. 575; 1993, c. 773.)

§ 3.1-249.55. Certificate renewals; late fee for delinquent renewals; reexamination.

If the application for renewal of any certificate provided for in this article is not filed prior to a date established by the Board, a late fee of twenty percent shall be assessed and added to the renewal fee and shall be paid by the applicant before the renewal shall be issued. If the certificate is not renewed within sixty days following the expiration of the certificate, then such certificate holder shall be required to take another examination.

The Board may provide, by regulation, for the biennial payment of commercial applicator and registered technician certificate renewal fees.

(1975, c. 377, § 3.1-249.7; 1989, c. 575; 1993, c. 773.)

§ 3.1-249.56. Reports of pesticide accidents, incidents or loss.

A. The Board shall by regulation require the reporting of significant pesticide accidents or incidents which constitute a threat to humans or the environment to appropriate governmental agencies. To the extent feasible, the accident reporting requirements shall be consistent with similar reports required under other laws.

B. Any person claiming damages from the use or application of any pesticide classified for restricted use shall file with the Commissioner a written statement claiming that he has been damaged, within sixty days after the date that damages occurred. If a growing crop is alleged to have been damaged, the statement must be filed prior to the time that twenty-five percent of the crop has been harvested. Such statement shall contain, but shall not be limited to, the name of the person allegedly responsible for the application of such pesticide, the name of the owner or lessee of the property on which the crop is grown and for which damage is alleged to have occurred, and the date on which the alleged damage occurred. The Commissioner shall, upon receipt of such statement, notify the certificate holder and the owner or lessee of the property or other person who may be charged with the responsibility of the damages claimed, and furnish copies of such statements as may be requested. The Commissioner shall inspect damages where possible and his findings shall be made available to the parties.

The filing of such statement or the failure to file such statement need not be alleged in any complaint which might be filed in a court of law, and the failure to file the statement shall not be considered any bar to the maintenance of any criminal or civil action.

Where damage is alleged to have occurred, the claimant shall permit the Commissioner, the certificate holder and his representatives, such as bondsman or insurer, to observe within reasonable hours any plants, animals or other property alleged to have been damaged in order that such damage may be examined. Failure of the claimant to permit such observation and examination of the damaged property shall relieve the Commissioner of responsibility to take further action with reference to that claim.

(1975, c. 377; 1981, c. 260, § 3.1-249.10; 1989, c. 575.)

§ 3.1-249.57. Reciprocal agreement.

The Commissioner may issue a certificate on a reciprocal basis with other states or federal agencies without examination in accordance with the provisions of this chapter or regulations, to a nonresident who is licensed or certified in another state or by a federal agency substantially in accordance with the provisions of this chapter. Such a certificate may be suspended or revoked in the same manner and on the same grounds as other certifications pursuant to the provisions of this article, and may be suspended or revoked if the nonresident's base state or federal certification is suspended or revoked.

(1975, c. 377; 1976, c. 236, § 3.1-249.12; 1989, c. 575.)

§ 3.1-249.58. Enforcement.

A. For the purpose of carrying out the provisions of this chapter the Commissioner may enter any public or private premises operating as a pesticide business at reasonable times, with the consent of the owner or tenant thereof, upon presentation of appropriate credentials in order: (i) to have access for the purpose of inspecting any equipment subject to this chapter, (ii) to inspect storage or disposal areas, (iii) to inspect or

investigate complaints of injury to humans, animals, birds or property, (iv) to sample any pesticide being applied or to be applied, or (v) to enforce any other provision of this chapter.

B. Should the Commissioner be denied access to any public or private premises operating as a pesticide business where such access was sought for the purposes set forth in this chapter, he may apply for an administrative search warrant, based upon a petition demonstrating probable cause and supported by an affidavit, issued by any judge having authority to issue criminal warrants or a magistrate whose territorial jurisdiction encompasses the premises to be inspected or entered, if the judicial officer is satisfied that there is reasonable and probable cause for the issuance of an administrative search warrant. No such warrant shall be issued pursuant to this section except upon probable cause, supported by affidavit, particularly describing the place, things or persons to be inspected or tested, and the purpose for which the inspection, testing, or collection of samples for testing is to be made. Probable cause shall be deemed to exist if either (i) reasonable legislative or administrative standards for conducting such inspection, testing or collection of samples for testing are satisfied with respect to the particular place, thing, or person, or (ii) there is cause to believe that there is a condition, object, activity, or circumstance which legally justifies such inspection, testing, or collection of samples for testing. The supporting affidavit shall contain either a statement that consent to inspect, test, or collect samples for testing has been sought and refused or facts or circumstances reasonably justifying the failure to seek such consent in order to enforce effectively the pesticide control laws and regulations of the Commonwealth which authorize such inspection, testing, or collection of samples for testing. In the case of an administrative search warrant based on legislative or administrative standards for selecting places of business for inspection, the affidavit shall contain factual allegations sufficient to justify an independent determination by the court official that the inspection program is based on reasonable standards and that the standards are being applied to a particular place of business in a neutral and fair manner. The issuing judicial officer may examine the affiant under oath or affirmation to verify the accuracy of any matter in the affidavit.

C. Any administrative search warrant shall be effective for a period of not more than fifteen days, unless extended or renewed by the judicial officer who signed and issued the original warrant. The warrant shall be executed and shall be returned to the judicial officer by whom it was issued within the time specified in the warrant or within the extended or renewed time. The return shall list any records removed or samples taken pursuant to the warrant. After the expiration of such time, the warrant, unless executed, shall be void.

D. No warrant shall be executed in the absence of the owner, tenant, operator or agent in charge of the premises, unless specifically authorized by the issuing judicial officer upon a showing that such authority is reasonably necessary to effect the purposes of the law or regulation being enforced. An entry pursuant to this warrant shall not be made forcibly, except that the issuing officer may expressly authorize a forcible entry (i) where facts are shown sufficient to create a reasonable suspicion of an immediate threat to the health and safety of persons or to the environment, or (ii) where facts are shown establishing that

reasonable attempts to serve a previous warrant have been unsuccessful. If forcible entry is authorized, the warrant shall be issued jointly to the Commissioner and to a law-enforcement officer who shall accompany the Commissioner's duly authorized agent during the execution of the warrant.

E. No court of the Commonwealth shall have jurisdiction to hear a challenge to the warrant prior to its return to the issuing judicial officer, except as a defense in a contempt proceeding, unless the owner or custodian of the place to be inspected makes by affidavit a substantial preliminary showing accompanied by an offer of proof that (i) a false statement, knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in his affidavit for the administrative search warrant, and (ii) the false statement was necessary to the finding of probable cause. The court shall conduct such expeditious in camera review as the court may deem appropriate.

F. After the warrant has been executed and returned to the issuing judicial officer, the validity of the warrant may be reviewed either as a defense to any Notice of Violation issued by the Commissioner or otherwise by declaratory judgment action brought in a circuit court. In any such action, the review shall be confined to the face of the warrant and affidavits and supporting materials presented to the issuing judicial officer unless the owner or person in charge of the premises inspected makes by affidavit a substantial showing accompanied by an offer of proof that (i) a false statement, knowingly and intentionally, or with reckless disregard for the truth, was made in support of the warrant and (ii) the false statement was necessary to the finding of probable cause. The reviewing court shall not conduct a de novo determination of probable cause, but only determine whether there is substantial evidence in the record supporting the decision to issue the warrant.

(1975, c. 377, § 3.1-249.18; 1989, c. 575; 1993, c. 773.)

Article 4 - Marine Antifoulant Paints.

§ 3.1-249.59. Definitions.

As used in this article, unless the context requires otherwise:

"Acceptable release rate" means a measured release rate not to exceed 4.0 micrograms per square centimeter per day at steady state conditions as determined in accordance with a U.S. Environmental Protection Agency (EPA) testing procedure as outlined in the EPA data call-in notice of July 29, 1986, on tributyltin in antifoulant paints under the Federal Insecticide, Fungicide and Rodenticide Act, (7 U.S.C. § 136 et seq.). If a lower release rate is determined by the Board to be necessary to protect health or the environment, such rate, if duly adopted by regulatory action of the Board, shall be the acceptable release rate as herein defined.

"Board" means the Pesticide Control Board.

"Commercial boat yard" means any facility which engages for hire in the construction, storage, maintenance, repair or refurbishing of vessels (other than seaplanes) or any licensed independent marine maintenance contractor who engages in such activities.

"Marine antifoulant paint" means any compound, coating, paint or treatment applied or used for the purpose of controlling freshwater or marine fouling organisms on vessels.

"Tributyltin compounds" means any compound having three normal butyl groups attached to a tin atom and with or without an anion such as chloride, fluoride or oxide.

"Vessel" means every description of watercraft, other than a seaplane, used or capable of being used as a means of transportation on the water, whether self-propelled or otherwise, and includes barges and tugs.

(1987, c. 15, § 3.1-249.22; 1989, c. 575.)

§ 3.1-249.60. Sale and application of tributyltin compounds.

A. Except as otherwise provided in this section, a person may not distribute, possess, sell or offer for sale, apply or offer for use or application any marine antifoulant paint containing tributyltin compounds. Authorized personnel of the Department of Game and Inland Fisheries, Virginia Marine Resources Commission, or the Department of Agriculture and Consumer Services may seize any antifoulant paint held in violation of this article and any seized substances shall be considered forfeited.

B. A person may distribute or sell a marine antifoulant paint containing tributyltin with an acceptable release rate to the owner or agent of a commercial boat yard. The owner or agent of a commercial boat yard may possess and apply, or purchase for application, an antifoulant paint containing tributyltin with an acceptable release rate; however, such paint may be applied only within a commercial boat yard and only to vessels which exceed twenty-five meters (82.02 feet) in length or which have aluminum hulls.

C. A person may distribute, sell or apply a marine antifoulant paint containing tributyltin having an acceptable release rate if the paint is distributed or sold in a spray can in a quantity of sixteen ounces avoirdupois or less and is commonly referred to as outboard or lower unit paint.

(1987, c. 15, § 3.1-249.23; 1989, c. 575.)

§ 3.1-249.61. Educational programs.

Through cooperative programs the State Water Control Board, the Board of Game and Inland Fisheries, the Virginia Marine Resources Commission, the Virginia Institute of Marine Science, and the Department of Agriculture and Consumer Services shall begin immediately to develop and implement a program designed to inform interstate and intrastate paint manufacturers and distributors, vessel owners and commercial boat yards

in the Commonwealth of properties of tributyltin in marine antifoulant paints and the law to restrict its use.

(1987, c. 15, § 3.1-249.24; 1989, c. 575.)

§ 3.1-249.62. Emergency actions.

Nothing in this article is intended to prevent or discourage the Board from further restricting the distribution, possession, sale or use of tributyltin compounds.

(1987, c. 15, § 3.1-249.25; 1989, c. 575.)

Article 5 - Violations, Penalties and Proceedings in Case of Violations.

§ 3.1-249.63. Violations generally.

A. It shall be unlawful for any person to manufacture, distribute, sell or offer for sale, use or offer for use:

1. Any pesticide which is not registered pursuant to the provisions of Article 2 (§ [3.1-249.35](#) et seq.) of this chapter, or any pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration. In the discretion of the Commissioner, a change in the labeling or formula of a pesticide may be made, within a registration period, without requiring reregistration of the product; however, changes at no time are permissible if they lower the efficacy of the product.
2. Any pesticide sold, offered for sale, or offered for use which is not in the registrant's or the manufacturer's unbroken container, and to which there is not affixed a label visible to the public bearing the following information:
 - a. The name and address of the manufacturer, registrant, or person for whom manufactured;
 - b. The name, brand, or trademark under which said pesticide is sold; and
 - c. The net weight or measure of the content, subject to such reasonable variations as the Commissioner may permit.
3. Any pesticide which contains any substance or substances in quantities highly toxic to man, unless the label shall bear, in addition to any other matter required by this chapter:
 - a. A skull and crossbones;

b. The word "poison" prominently, in red, on a background of distinctly contrasting color; and

c. A statement of an antidote for the pesticide.

4. The pesticides commonly known as lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate unless they have been distinctly colored or discolored as provided by regulations issued in accordance with this chapter, or any other white powder pesticide which the Commissioner, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of such coloration or discoloration, shall, by regulation, require to be distinctly colored or discolored, unless it has been so colored or discolored. The Commissioner may exempt any pesticide to the extent that it is intended for a particular use or uses from the coloring or discoloring required or authorized by this subsection if he determines that such coloring or discoloring for such use or uses is not necessary for the protection of the public health.

5. Any pesticide which is adulterated or misbranded, or any device which is misbranded.

6. Any pesticide that is the subject of a stop sale, use, or removal order as provided for in § [3.1-249.77](#) until such time as the provisions of that section have been met.

B. In addition to imposing civil penalties or referring certain violations for criminal prosecution the Board may, after providing an opportunity for a hearing, deny, suspend, modify, or revoke a license issued under this chapter if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation:

1. Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized or sold;

2. Made a pesticide recommendation inconsistent with the label registered pursuant to this chapter, provided that such deviation may include provisions set forth in Section 2 (ee) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. § 136 et seq.);

3. Was guilty of negligence, incompetence or misconduct in acting as a pesticide business;

4. Made false or fraudulent records, invoices or reports;

5. Failed or refused to submit records required by the Board;

6. Used fraud or misrepresentation, or presented false information in making application for a license or renewal of a license, or in selling or offering to sell pesticides;

7. Stored or disposed of containers or pesticides by means other than those prescribed on the label or adopted regulation;

8. Provided or made available any restricted use pesticide to any person not certified, under the provisions of Article 3 (§ [3.1-249.51](#) et seq.) of this chapter, to apply such product;

9. Failed to notify the Department of a reportable pesticide spill, accident or incident;

10. Acted in any way as a pesticide business in Virginia without first obtaining the pesticide business license required in § [3.1-249.46](#);

11. Failed to pay any civil penalty assessed by the Board.

C. The Board may, after opportunity for a hearing, deny, suspend, revoke or modify the provision of any certificate issued under Article 3 of this chapter, if it finds that the applicant or the holder of a certificate:

1. Has committed any of the following acts, each of which is declared to be a violation of the provisions of Article 3 of this chapter:

a. Made claims through any media intentionally misrepresenting the effects on the environment likely to result from the application of a pesticide;

b. Used or caused to be used any pesticide inconsistent with the label registered by the United States Environmental Protection Agency, a Virginia state registered use or other uses restricted by the Board;

c. Made application of any pesticide in a negligent manner;

d. Neglected or, after notice, refused to comply with the provisions of this article, the regulations adopted hereunder or of any lawful order of the Commissioner or the Board;

e. Refused or neglected (i) to keep and maintain records or reports required pursuant to the provisions of Article 3 of this chapter or regulations or (ii) to furnish or permit access for copying by the Commissioner any such records or reports;

f. Made false or fraudulent records, invoices or reports relative to the use or application of any pesticide;

g. Used or caused to be used any pesticide classified for restricted use on any property unless by or under the direct supervision of a certified applicator;

h. Used fraud or misrepresentation in making an application for a certificate or renewal of a certificate;

- i. Refused or neglected to comply with any limitations or restrictions on or in a duly issued certification;
 - j. Aided, abetted, or conspired with any person to violate the provisions of Article 3 of this chapter, or permitted one's certification or registration to be used by another person;
 - k. Impersonated any federal, state, county or city inspector or official; or
 - l. Made any statement, declaration or representation through any media implying that any person certified or registered under the provisions of Article 3 of this chapter is recommended or endorsed by any agency of this Commonwealth.
2. Has been convicted or is subject to a final order assessing a penalty pursuant to § 14 (a) or (b) of the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 et seq.), as amended.

D. The Board shall suspend the license or certificate of a business or person if a civil penalty issued to the business or person is not paid within sixty days of issuance unless the business or person challenges such civil penalty pursuant to subsection F of § [3.1-249.70](#).

The Board, when deciding whether to deny, suspend, revoke, or modify any certificate or license, shall give due consideration to (i) the history of previous violations of the licensee or person, (ii) the seriousness of the violation including any irreparable harm to the environment and any hazards to the health and safety of the public, and (iii) the demonstrated good faith of the licensee or person charged in attempting to achieve compliance with the chapter after notification of the violation.

(Code 1950, § 3-208.31; 1960, c. 535; 1966, c. 702; 1976, c. 627; 1981, c. 260, § 3.1-233; 1989, c. 575; 1993, c. 773.)

§ 3.1-249.64. Use of pesticide or container inconsistent with label directions or regulations of Board; knowing use.

A. It shall be unlawful for any person to use or cause to be used any pesticide in a manner inconsistent with its labeling or regulations of the Board, provided that such deviation may include provisions set forth in Section 2 (ee) of the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 et seq.); and it also shall be unlawful to dispose of containers or unused portions of pesticide inconsistent with label directions or the regulations of the Board in the absence of label directions, or if those regulations further restrict such disposal.

B. It shall be unlawful for any person to knowingly use any pesticide against any organism that is otherwise protected under fish, game, or migratory bird laws, without first obtaining authorization as necessary from the federal or state agency responsible for the protection of the organism.

(1970, c. 376; 1975, c. 102, § 3.1-233.1; 1989, c. 575; 1993, c. 773.)

§ 3.1-249.65. Alteration, etc., of label.

It shall be unlawful for any person to detach, alter, deface or destroy, in whole or in part, any label or labeling provided for in this chapter or the rules and regulations promulgated under this chapter.

(Code 1950, § 3-208.32; 1966, c. 702, § 3.1-234; 1989, c. 575.)

§ 3.1-249.66. Refusal of access to records.

It shall be unlawful for any manufacturer, distributor, dealer, carrier, or other person to refuse, upon a request in writing specifying the nature or kind of pesticide or device to which such request relates, to furnish to or permit any person designated by the Commissioner to have access to and to copy such records of business transactions as may be essential in carrying out the purposes of this chapter.

(Code 1950, § 3-208.34; 1966, c. 702; 1981, c. 260, § 3.1-236; 1989, c. 575.)

§ 3.1-249.67. Giving false guaranty; names and addresses of persons giving and receiving guaranty.

It shall be unlawful for any person to give a guaranty or undertaking provided for in § [3.1-249.74](#) which is false in any particular, except that a person who receives and relies upon a guaranty authorized under such section may give a guaranty to the same effect, which guaranty shall contain in addition to his own name and address the name and address of the person residing in the United States from whom he received the guaranty or undertaking.

(Code 1950, § 3-208.35; 1966, c. 702, § 3.1-237; 1989, c. 575.)

§ 3.1-249.68. Protection of trade secrets and other information.

A. In submitting data required by this chapter, the applicant may (i) clearly mark any portions thereof which in his opinion are trade secrets or commercial or financial information and (ii) submit such marked materials separately from other material required to be submitted under this chapter.

B. Notwithstanding any other provision of this chapter, and subject to the limitations in subsections D and E of this section, the Commissioner shall not make public information which in his judgment contains or relates to trade secrets or commercial or financial information obtained from a person and privileged or confidential, except that, when necessary to carry out the provisions of this chapter, information relating to formulas of products acquired by authorization of this chapter may be revealed to any federal, state or

local agency consulted and may be revealed at a public hearing or in findings of fact issued by the Commissioner or Board.

C. If the Commissioner proposes to release for inspection information which the applicant or registrant believes to be protected from disclosure under subsection B of this section, he shall notify the applicant or registrant, in writing, by certified mail. The Commissioner shall not thereafter make available for inspection such data until thirty days after receipt of the notice by the applicant or registrant. During this period, the applicant or registrant may institute an action in an appropriate circuit court for a declaratory judgment as to whether such information is subject to protection under subsection B.

D. 1. All information concerning the objectives, methodology, results, or significance of any test or experiment performed on or with a registered or previously registered pesticide or its separate ingredients, impurities, or degradation products, and any information concerning the effects of such pesticide on any organism or the behavior of such pesticide in the environment, including, but not limited to, data on safety to fish and wildlife, humans and other mammals, plants, animals, and soil, and studies on persistence, translocation and fate in the environment, and metabolism, shall be available for disclosure to the public. The use of such data for any registration purpose shall be governed by Article 2 (§ [3.1-249.35](#) et seq.) of this chapter. This subsection does not authorize the disclosure of any information that:

- a. Discloses manufacturing or quality control process,
- b. Discloses the details of any methods for testing, detecting, or measuring the quantity of any deliberately added inert ingredient of a pesticide, or
- c. Discloses the identity or percentage quantity of any deliberately added inert ingredient of a pesticide, unless the Commissioner has first determined that disclosure is necessary to protect against an unreasonable risk of injury to health or the environment.

2. Information concerning production, distribution, sale, or inventories of a pesticide that is otherwise entitled to confidential treatment under subsection B of this section may be publicly disclosed in connection with a public proceeding to determine whether a pesticide, or any ingredient of a pesticide, causes unreasonable adverse effects on health or the environment, if the Commissioner determines that such disclosure is necessary in the public interest.

3. If the Commissioner proposes to disclose information described in subdivisions D 1 a, b, or c or subdivision D 2 of this section, the Commissioner shall notify by certified mail the submitter of such information of the intent to release such information. The Commissioner shall not release such information, without the submitter's consent, until thirty days after the submitter has been furnished such notice. Where the Commissioner finds that disclosure of information described in subdivisions D 1 a, b, or c is necessary to avoid or lessen an imminent and substantial risk or injury to the public health, the

Commissioner may set such shorter period of notice and such method of notice as the Commissioner finds appropriate. During such period the data submitter may institute an action in an appropriate circuit court to enjoin or limit the proposed disclosure. The court shall give expedited consideration to any such action. The court may enjoin disclosure, or limit the disclosure or the parties to whom disclosure shall be made, to the extent that:

a. In the case of information described in subdivision D 1 a, b, or c, the proposed disclosure is not required to protect against an unreasonable risk of injury to health or the environment; or

b. In the case of information described in subdivision D 2 of this section, the public interest in availability of the information in the public proceeding does not outweigh the interests in preserving the confidentiality of the information.

E. Information otherwise protected from disclosure to the public under subsection B of this section may be disclosed to contractors with the Commonwealth and employees of such contractors if, in the opinion of the Commissioner, such disclosure is necessary for the satisfactory performance by the contractor of a contract with the Commonwealth for the performance of work in connection with this chapter and under such conditions as the Commissioner may specify. The Commissioner shall require as a condition to the disclosure of information under this section that the person receiving it take such security precautions respecting the information as the Board shall by regulation prescribe.

F. The Commissioner shall not knowingly disclose information submitted by an applicant or registrant under this chapter to any employee or agent of any business or other entity engaged in the production, sale, or distribution of pesticides in countries other than the United States or in addition to the United States or to any other person who intends to deliver such data to such foreign or multinational business or entity unless the applicant or registrant has consented to such disclosure. The Commissioner shall require an affirmation from any person who intends to inspect data that such person does not seek access to the data for purposes of delivering it or offering it for sale to any such business or entity or its agents or employees and will not purposefully deliver or negligently cause the data to be delivered to such business or entity or its agents or employees.

Notwithstanding any other provision of this section the Commissioner may disclose information to any person in connection with a public proceeding under law or regulation, subject to restrictions on the availability of information contained elsewhere in this chapter, which information is relevant to the determination by the Commissioner with respect to whether a pesticide, or any ingredient of a pesticide, causes unreasonable adverse effects on health or the environment.

The Commissioner shall maintain records of the names of persons to whom data are disclosed under this section and the persons or organizations they represent and shall inform the applicant or registrant of the names and affiliation of such persons.

G. Any person, who, with intent to defraud, uses or reveals information relative to formulas of products acquired pursuant to this chapter shall be guilty of a Class 6 felony.

(Code 1950, § 3-208.36; 1966, c. 702; 1975, c. 102, § 3.1-238; 1989, c. 575.)

§ 3.1-249.69. Interference with Commissioner or agents.

It shall be unlawful for any person to oppose or interfere in any way with the Commissioner or his duly authorized agents in carrying out the duties imposed by this chapter.

(Code 1950, § 3-208.37; 1966, c. 702, § 3.1-239; 1989, c. 575.)

§ 3.1-249.70. Penalties; action to enjoin violation; compromise.

A. Except as otherwise provided, any person who knowingly violates any provisions of this chapter or regulations promulgated hereunder shall be guilty of a Class 1 misdemeanor and shall be subject to an additional fine of up to \$500,000 if death or serious physical harm to any person is caused by the violation.

B. The Commissioner may bring an action to enjoin the violation or threatened violation of any provision of this chapter, or any regulation made pursuant thereto, in the circuit court of the county or city in which the violation occurs or is about to occur, or in the Circuit Court of the City of Richmond if the violation may affect more than one county or city. The Commissioner may request either the attorney for the Commonwealth or the Attorney General to bring action under this section, when appropriate.

C. Any person violating a provision of this chapter or regulations adopted thereunder may be assessed a civil penalty by the Board. In determining the amount of any civil penalty, the Board shall give due consideration to (i) the history of previous violations of the licensee or person, (ii) the seriousness of the violation including any irreparable harm to the environment and any hazards to the health and safety of the public, and (iii) the demonstrated good faith of the licensee or person charged in attempting to achieve compliance with the chapter after notification of the violation.

D. The Board may assess a penalty of not more than \$1,000 for a violation that is less than serious, not more than \$5,000 for a serious violation, and not more than \$20,000 for a repeat or knowing violation. The Board may assess an additional penalty of up to \$100,000 for any violation which causes serious damage to the environment, serious injury to property, or serious injury to or death of any person.

E. Civil penalties assessed under this section shall be paid into a special fund in the state treasury to the credit of the Department to be used in carrying out the purposes of this chapter. The Commissioner shall prescribe procedures for payment of penalties which are not contested by licensees or persons. The procedures shall include provisions for a licensee or person to consent to abatement of the alleged violation and pay a penalty or

negotiated sum in lieu of such penalty without admission of civil liability arising from such alleged violation.

F. The person or business to whom a civil penalty is issued shall have fifteen days to request an informal fact-finding conference, held pursuant to § [2.2-4019](#), to challenge the fact or amount of the civil penalty. If the civil penalty is upheld, the person or business against whom the civil penalty has been upheld shall have fifteen days to pay the proposed penalty in full, or if the person or business wishes to contest either the amount of the penalty or the fact of the violation, forward the proposed amount to the Commission's office for placement in an interest-bearing trust account in the State Treasurer's office. If through administrative or judicial review of the proposed penalty, it is determined that no violation occurred, or that the amount of penalty should be reduced, the Commissioner shall within thirty days of that determination remit the appropriate amount to the person or business with interest accrued thereon. If the violation is upheld, the amount collected shall be paid into a special fund in the state treasury to the credit of the Department as provided in § [3.1-249.34](#).

Final orders of the Board may be recorded, enforced and satisfied as orders or decrees of a circuit court upon certification of such orders by the secretary of the Board. Such orders may be appealed in accordance with the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.).

(Code 1950, § 3-208.39; § 3-208.42; 1966, c. 702; 1970, c. 376, §§ 3.1-241, 3.1-244; 1989, c. 575; 1993, c. 773.)

§ 3.1-249.71. Proceedings in case of violations.

If it appears from the examination of laboratory results or other evidence collected during an investigation that any of the provisions of this chapter or the regulations issued thereunder have been violated, the Commissioner may cause notice of such violation to be given to the registrant, distributor, possessor, licensee, applicator or other person from whom such evidence was taken. Any party so notified shall be given an opportunity to be heard under such regulations as may be prescribed by the Board. If it appears after such hearing that there has been a violation of this chapter or the regulations issued thereunder, the Commissioner may certify the facts to the Board or the proper prosecuting attorney and furnish the Board or that officer with a copy of the results of such examination or investigation.

(Code 1950, § 3-208.40; 1966, c. 702; 1981, c. 260, § 3.1-242; 1989, c. 575.)

§ 3.1-249.72. Duty of attorney for Commonwealth.

It shall be the duty of every attorney for the Commonwealth to whom the Commissioner shall report any violation of this chapter to cause proceedings to be prosecuted without delay for the fines and penalties in such cases.

(Code 1950, § 3-208.41; 1966, c. 702, § 3.1-243; 1989, c. 575.)

§ 3.1-249.73. Warning instead of report of violation.

Nothing in this chapter shall be construed as requiring the Commissioner to report for the institution of proceedings under this chapter, minor violations of this chapter, whenever the Commissioner believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning. Copies of such warnings shall be reported to the Board.

(Code 1950, § 3-208.43; 1966, c. 702, § 3.1-245; 1989, c. 575.)

§ 3.1-249.74. Exemptions from penalties.

The penalties provided for violations of § [3.1-249.63](#) shall not apply to:

1. Any carrier while lawfully engaged in transporting pesticides within this Commonwealth, if such carrier shall, upon request, permit the Commissioner or his designated agent to copy all records showing the transactions in and movements of the pesticides;
2. Public officials of this Commonwealth and the federal government engaged in the performance of their official duties in carrying out the provisions of this chapter and the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 et seq.) as amended;
3. Those individuals or agencies authorized by law to conduct research in the field of pesticides when such research is conducted in accordance with regulations established by the Board;
4. Any person who establishes a guaranty signed by, and containing the name and address of, the registrant or person residing in the United States from whom he purchased and received in good faith the pesticide in the same unbroken package, to the effect that the pesticide was lawfully registered at the time of sale and delivery to him, and that it complies with the other requirements of this chapter, designating this chapter. In such case the guarantor shall be subject to the penalties which would otherwise attach to the person holding the guaranty under the provisions of this chapter.

(Code 1950, § 3-208.44; 1966, c. 702; 1981, c. 260, § 3.1-246; 1989, c. 575.)

§ 3.1-249.75. Medicinal and toilet preparations, drugs or chemicals.

This chapter shall not apply to any preparation, drug, or chemical intended to be used or sold solely for medicinal use or for toilet purposes.

(Code 1950, § 3-208.45; 1966, c. 702, § 3.1-247; 1989, c. 575.)

§ 3.1-249.76. Summary suspension by Commissioner; procedure.

The Commissioner may suspend the license of any person licensed or certified without a hearing simultaneously with the institution of proceedings for a hearing, if he finds there is a substantial danger to the public health, safety, or the environment which warrants this action. Institution of proceedings for a hearing shall be provided simultaneously with the summary suspension. The hearing shall be scheduled within a reasonable time of the date of the summary suspension.

Any licensee or certificate holder whose license or certificate has been suspended shall not engage in the activity for which he has been certified or licensed pending the hearing.

(1989, c. 575.)

§ 3.1-249.77. "Stop-sale or removal" orders; "Stop-use" orders; judicial review.

A. The Commissioner or his duly authorized agent shall issue and enforce a written or printed "stop sale or removal" order directed to the owner or custodian of any lot of pesticide, requiring him to hold it at a designated place, when the Commissioner or his duly authorized agent has reason to believe that the pesticide is being offered for sale or use or is being used in violation of any of the provisions of this chapter, until the Virginia Pesticide Control Act (§ [3.1-249.27](#) et seq.) has been complied with and the pesticide is released in writing by the Commissioner or his duly authorized agent, or the violation has been otherwise legally disposed of by written authority. The owner or custodian of such pesticide shall have the right to administrative and judicial review of such order in accordance with the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.). The provisions of this section shall not be construed as limiting the right of the enforcement officer to proceed as authorized by other provisions of this chapter. The Commissioner or his duly authorized agent shall release the pesticide so withdrawn when the requirements of the provisions of this chapter have been complied with and upon payment of all costs and expenses incurred in connection with the withdrawal.

B. The Commissioner or his duly authorized agent shall issue and enforce a written or printed "stop-use" order directed to a person or business when the Commissioner or his duly authorized agent has reason to believe that any pesticide is being offered for sale or use or is being used in violation of any of the provisions of this chapter, until the Virginia Pesticide Control Act has been complied with or the violation has been otherwise legally disposed of by written authority. The person or business shall have the right to administrative and judicial review of such order in accordance with the provisions of the Administrative Process Act. The provisions of this section shall not be construed as limiting the right of the enforcement officer to proceed as authorized by other provisions of this chapter.

(Code 1950, § 3-208.46; 1966, c. 702; 1981, c. 260; 1986, c. 615, § 3.1-248; 1989, c. 575; 1993, c. 773.)

§ 3.1-249.78. Seizure, condemnation and sale.

Any lot of pesticide not in compliance with the provisions of this chapter shall be subject to seizure on complaint of the Commissioner to a court of competent jurisdiction in the area in which the pesticide is located. In the event the court finds the pesticide to be in violation of this chapter and orders its condemnation, it shall be disposed of in any manner consistent with its quality and the laws of the Commonwealth; however, in no instance shall the disposition of the pesticide be ordered by the court without first giving the claimant an opportunity to apply to the court for the release of such pesticide or for permission to process, relabel, or otherwise bring it into compliance with this chapter.

(Code 1950, § 3-208.47; 1966, c. 702; 1981, c. 260, § 3.1-249; 1989, c. 575.)